IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No 844 to 851 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

GUJARAT STATE

Versus

VAJSI GIGA FOR GIGA PUNJA

Appearance:

FIRST APPEALS NO. 844 to 847 of 1995
Mr. M.R.Raval, A.G.P. for the appellants.
Mr. CL Soni with Mr.Yatin Soni for Respondent

FIRST APPEALS NO. 848 to 851 of 1995
Mr. H.L.Jani, A.G.P. for the appellants.
Mr. CL Soni with Mr. Yatin Soni for respondent.

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 15/02/99

ORAL COMMON JUDGEMENT

(Per : Panchal, J.)

These appeals, which are instituted under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated September 4, 1993 rendered by the learned Assistant Judge, Porbandar,in Land Acqisition Reference Cases No. 53/89 to 60/89. As common questions of fact and law are involved in these appeals, we propose to dispose of them by this common judgment.

2. Pursuant to a proposal received by the State Government to acquire agricultural lands of village Kadegi, Taluka : Mangrol, District : Junagadh, necessary inquiries were made by the State Government and the State Government was satisfied that the agricultural lands of village Kadegi were likely to be needed for public purpose of Amipur Irrigation Scheme. Therefore, notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued, which was published in the Official Gazette on December 1, 1977. After hearing the objections raised by the land owners, a report was forwarded to the State Government by the Deputy Collector and Land Acquisition Officer, Junagadh under section 5A(2) of the Act. On consideration of the said report, State Government was satisfied that the lands specified in the notification published under section 4(1) of the Act were needed for public purpose of Amipur Irrigation Scheme. Accordingly, declaration under section 6 of the Act was made which was published in Official Gazette on February 15, 1978. The interested persons were thereafter served with notices under section 9 of the Act for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs. 800/- per Are. Having regard to the materials placed before him, the Land Acquisition Officer by his award dated March 27, 1978 offered compensation to the claimants in some cases at the rate of Rs. 75/- per Are and in other cases at the rate of Rs. 50/- per Are and also at the rate of Rs.20/or Rs. 30/- per Are having regard to fertility, location etc. of the acquired lands. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate and therefore, by making applications in writing, they required the Land Acquisition Officer to refer the matters to the Court for determination of compensation. Accordingly, references were made to the District Court, Junagadh, which were numbered as Land Reference Cases No. 53/89 to 60/89. In the reference applications it was claimed by the claimants that having regard to the prevailing market

price of the lands situated nearby as well as income derived from sale of agricultural produces, they were entitled to compensation at the rate of Rs. 800/- per Are. The reference applications were contested by the present appellants vide common written statement Exh.15. In the reply, it was pleaded by the appellants that the market price was properly determined by the Land Acquisition Officer and as compensation offered to the claimants was just and adequate, reference applications should be dismissed. Upon rival assertions of the parties, necessary issues for determination were raised by the reference court. In order to substantiate the claim advanced in the reference applications, the claimants had examined; (1) Vajsi Giga at Exh.24, (2) Rana Teba at Exh.25, (3) Bhima Vasa at Exh.26, (4) Deva Vasa at Exh.27, (5) Jiva Vasa at Exh.28, (6) Rama Veja at Exh.29, (7) Karsan Uga at Exh.30, and (8) Ramdebhai Karsanbhai at Exh.31. They had also produced sale instances at Exhs. 20, 21 & 21. It may be mentioned that on behalf of the appellants, no one was examined to substantiate the assertions made in the written statement. On appreciation of evidence, reference court held that the sale deeds produced by the claimants indicated that the price of the lands situated nearby was Rs. 800/- per Are on or about the time of publication of notification under section 4 of the Act, but did not rely upon the sale deeds for the purpose of determining market value of the acquired lands. The reference Court relied upon the oral evidence led by the claimants to determine compensation of the acquired lands on the basis of yield. The witnesses examined on behalf of the claimants had deposed about fertility of lands as well as given particulars of the crops which were being raised by the claimants on the acquired lands. The witnesses had also deposed regarding quantity of the crops raised as well as price of crops on or about the time of publication of notification under section 4 of the Act. The reference Court noticed that the average yield of the acquired lands per bigha was Rs. 2108/- and if 1/3rd amount towards cultivation expenses was deducted, the net income would be Rs. 1400/- per bigha. The reference Court was of the opinion that multiplier of 12.5 should be applied to the facts of the present cases and deduced that the market value of the acquired lands per Are would be Rs. 1093.75 ps. However, the reference Court noticed that exaggeration in the net income was made by the claimants and, therefore, in ultimate analysis held that the claimants were entitled to compensation at the rate of Rs. 400/per Are by impugned common award dated September 4, 1993, giving rise to present appeals.

3. Learned counsel for the appellants submitted that the compensation awarded by the Land Acquisition Officer was fair as well as adequate and, therefore, additional amount of compensation should not have been awarded by the reference court. It was stressed that no cogent and reliable evidence was led by the claimants to establish income derived by them from the sale of agricultural produces and, therefore, yield method should not have been adopted by the reference court for the purpose of ascertaining market value of the acquired lands. It was asserted by the learned Counsel for the appellants that the method of arriving at the net income from the sale of agricultural produces was not only illegal, but not warranted by any of the methods known to law for the purpose of ascertaining market value of the acquired lands and, therefore, impugned common award should be set aside. It was further stressed that in view of the judgments of the Supreme Court holding that 50% should be deducted towards cultivation expenses and multiplier of more than ten should not be adopted while ascertaining market value of the acquired lands on yield basis, the appeals filed by the State Government and another should be accepted. It was also stressed on behalf of the appellants that the claimants did not establish before the reference court that they were deriving particular income from sale of agricultural produces and, therefore, reference applications ought to have been dismissed by the reference court. In the alternative, the learned Counsel vehemently submitted that the claimants are not entitled to additional compensation under section 23(1-A) of the Act and, therefore, the award made in favour of the claimants under section 23(1-A) of the Act should be set aside, as the Land Acquisition Officer had made award prior to the coming into force of Act 68 of 1994 by which section 23(1-A) of the Act was inserted in the statute book. It was also pleaded that the claimants were also not entitled to solatium on additional amount of compensation payable under section 23(1-A) of the Act and, therefore, the direction given by the reference court to pay solatium on additional amount of compensation payable under section 23(1-A) of the Act also deserves to be set aside.

4. Mr. C.L.Soni,learned Counsel for the claimants pleaded that oral evidence adduced by the claimants regarding income derived by them from sale of agricultural produces was never challenged by the appellants and, therefore, the appeals which are directed against a just and reasonable award passed by the refernce court should be dismissed. The learned Counsel for the claimants further highlighted that the sale

instances were not available to enable the Court to determine market value of the acquired lands and, therefore, the reference court did not commit any error in placing reliance on the evidence of the claimants regarding income derived by them from the sale of agricultural produces while determining market value of the acquired lands on the basis of yield. The learned Counsel produced order dated December 13, 1996 passed by the Supreme Court in Civil Appeal Nos. 16945-16964 of 1996 whereby determination of market value of the lands acquired in that case on the same basis as is adopted by the reference court in these cases, was upheld by the Supreme Court subject to direction to deduct 50% as cultivation expenses and to apply multiplier of 10 instead of 12.5. Placing reliance on said decision, it was submitted that the evidence tendered by the claimants has been accepted by the reference Court and, therefore, this Court should not set aside determination of market value of the acquired lands made by the reference Court on the basis of income from sale of agricultural produces and the appeals should be dismissed.

5. We have heard the learned Counsel for the parties at length and also taken into consideration the record of the case. It is relevant to notice that agricultural lands of village Miti (Ghed), Taluka : Mangrol, District : Junagadh were placed under acquisition pursuant to publication of notification on December 1, 1971, which was issued under section 4(1) of the Act. The Land Acquisition Officer therein had determined market value of the lands acquired in that case at different rates for different lands. In some cases, he had determined market price at Rs. 3/- per Are; whereas he had determined market price at Rs. 88/- per Are in other cases.The claimants had sought references and claimed compensation at the rate of Rs. 625/- per Are. The reference court by common judgment and award dated September 15, 1993 had determined market price of the lands acquired in that case at the rate of Rs. 325/- per Are. The copy of that award was produced by learned Counsel for the claimants for our perusal. It indicates that the reference Court had totalled the figure of income stated by witnesses examined on behalf of the claimants and determined market value after dividing said total by number of witnesses examined. Thereupon, the State of Gujarat and others had instituted First Appeals No. 2530/95 to 2549/95 before High Court challenging the said common award. The matter had come-up for hearing before the Division Bench comprising N.J.Pandya & S.K.Keshote, JJ. and the Division Bench had passed following order on September 22, 1995 ;-

"The amount awarded by the trial court takes care of all the eventualities, when the basis is crop-yield method. He has, no doubt, noted that the witnesses are interested in giving exaggerated figures and he has also noted wide variations coming out of depositions of various claimants in the course of the deposition before the trial court. But, when on the basis of the data figure available with him he has reduced the Are value by slashing it down to almost one-third of the figure worked out on the basis of the material, there is no reason for this court to interfere. Hence, these appeals are rejected."

The order passed by the Division Bench was subjected to appeal before Supreme Court and Supreme Court in Civil Appeals No. 16945-16964 of 1996 passed following order on December 13, 1996:-

"IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 16945-16964 OF 1996
(Arising out of SLP (C) No. 13322-41 of 1996)

The State of Gujarat & Ors. ... Appellants

Vs.

Rama Rana & Ors. ... Respondents

O R D E R

Delay condoned. Leave granted.

We have heard learned Counsel on both sides. These appeals by special leave arise from the judgment of the Gujarat High Court, made on September 22, 195 in F.A. Nos. 2532-2549/95.

A total extent of 68 hectares 62.5 sq.mts. of land was acquired for irrigation scheme by publication of the notification under section 4(1) of the Land Acquisition Act, 1894 (1 of 1894) (for short "the Act") on August 25, 1977. The Land Acquisition Officer in his award dated March 27, 1978 awarded compensation at the

rate of Rs. 2023.50 ps. per acre for the dry crop lands, Rs. 3035.25 for the irrigated lands, Rs. 40.47 for the waste lands. On reference under section 18 of the Act, the Asstt. District Judge by his award and decree dated September 13, 1993 enhanced the compensation to Rs. 325/per acre to all the lands irrespective of the classification. On appeal, the High Court in the impugned judgment confirmed the same. Thus, these appeals by special leave.

The reference court proceeded on the premises that there are no sale deeds exhibited for determination of the compensation. Therefore, the oral evidence was relied upon to determine the compensation, on the basis of the yield. 8 witnesses came to be examined in proof of the yield of the acquired lands. One of the witnesses was the Sarpanch of the village and his evidence was accepted. The reference Court also found that the witnesses exaggerated the yield. On that basis, it determined the market value after deducting 1/3 towards prices at Rs. 325/- per acre. It would be common knowledge that expenditure would be involved in raising and harvesting the crops and that, therefore, on an average 50% of the value of the crop realised would go towards cultivation expenses. Therefore, deduction of 1/3rd was not correct in determining the compensation of the lands on the basis of yield.

It is undoubtedly true that one of the methods of determination of compensation, in the absence of best evidence, namely, sale deeds, is the realised value of the crop. Normally, they should have produced the statistics from the Agricultural Department as to the nature of the crops and the prices prevailing at that time. But, unfortunately, neither claimants nor the Government took any steps to adduce that best evidence. It is a fact that the Government have failed to adduce any evidence in that behalf. However, we cannot reject the oral evidence of the witnesses on that ground alone. The court has statutory duty to the society to subject the oral evidence to great scrutiny, applying the test of normal prudent man,i.e. whether he would be willing to purchase the land at the rates proposed by the Court. On the touch stone of this, the Court should evaluate the evidence objectively and dispassionately and reach a finding on compensation. The reference Court has accepted the evidence of the Sarpanch to be the reliable person. Therefore, we proceed onthat premise. The appropriate multiplier should be of 10 years as settled by several judgments of this Court. Necessarily, 50% of the net value towards cultivation expenses requires to be

deducted. The award of the reference Court as confirmed by the High Court stands set aside and the value of the crop as determined by the reference Court at Rs. 2,050/as average annual income stands upheld. Multiplier of 10 years should be applied and deduction of 50% towards cultivation expenses should be made. After giving deduction, the balance will be the net value of the land. On that basis, the claimants are entitled to Rs. 20,500/- per acre with solatium @ 30% on enhanced compensation and interest on enhanced compensation @ 0.9% per annum for one year from the date of taking possession and 15% per annum till date of deposit into the court under the Act as amended by Act 68 of 1984, namely 30% solatium on the enhanced compensation, interest on the enhanced compensation from the date of taking possession for one year at 9% and thereafter at 15% till date of deposit.

The appeals are accordingly, allowed. No costs.

Sd/-
(K. Ramaswamy, J.)

Sd/-
(G.T.Nanavati, J.)
New Delhi
December 13m 1996."

6. After the above referred to order was passed by the Supreme Court, the State of Gujarat and others had filed Review Petitions No. 1134-1153/97 in Civil Appeals No. 16945-16964/96 and following order was passed by the Court on August 4, 1997 :-

"SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Review Petition Nos. 1134-1153/97 In
Civil Appeals No. 16945-16964/96

State of Gujarat & Ors. ..... Petitioners

Vs.

Rama Rana & Ors ..... Respondents
(with appln.for c/delay in filing RPs and clarification)

Date: 4.8.1997

CORAM :
Hon'ble Mr. Justice S.C.Agrawal
Hon'ble Mr. Justice G.T.Nanavati

For the Appellant(s) :

Mr. Adhyaru Yashank Pravin, Adv.
Mrs. Hemantika Wahi, Adv.
Ms. Sumita Hazarika, Adv.

For the Respondent(s)

Mr. Ranjit Kumar, Adv.
Mr. H.A. Raichura,Adv.

UPON hearing Counsel the Court made the following

O R D E R

Delay condoned.

In the Order dated December 13, 1996 at page 3 for the words "the claimants are entitled to Rs. 20,500/per acre" the words "the claimants are entitled to Rs. 10,250/- per bigha" shall be substituted. The review petitions are disposed of with this modification. No order as to costs.

Sd/- Sd/-
(Vijay Kumar Sharma) (Gopi Balaui)
Court Master Court Master

Signed order is placed on the file."

Thereafter, the State of Gujarat and others had filed I.A. Nos. 41-60 in R.P.(C) Nos. 1134-1153/97 in C.A.Nos. 16945-16964/96 for clarification/modification of the order and those I.As. were dismissed by order dated March 17, 1998.

7. It is undoubtedly true that one of the methods of determination of compensation, in the absence of best evidence, namely, sale deeds, is the realised value of the crop and normally, the claimants should produce the statistics from the Agriculture Department as to the nature of the crops and the prices prevailing at the relevant time. But, unfortunately, neither claimants nor

the Government took any steps to adduce that best evidence. Though the reference Court has held in the impougned award that sale deeds produced by the claimants indicate price of the lands per Are at Rs. 800/- on or about the time of publication of notification under section 4(1) of the Act, sale deeds are not relied on by the Reference Court for the purpose of determination of market value of the acquired lands. However, as observed by the Supreme Court in the above quoted order, oral evidence of the witnesses on that ground alone cannot be rejected merely because they have failed to adduce best evidence because it is statutory duty of the Court to the society to subject the oral evidence to great scrutiny and thereafter to determine market price of the acquired lands. It is true that the claimants ought to have produced documentary evidence or other evidence to support their say regarding quantity of crops raised by them on the acquired lands as well as income derived by them from the sale of agricultural produces and left to us, we would have remanded the matters to the reference Court with permission to the parties to lead evidence in the matters, we find that the facts before the Supreme Cort and in these cases are almost identical and, therefore, it is not permissible to us to remand the matters to the reference Court with liberty to the parties to lead evidence in the matters regarding quantity of crops raised on the acquired lands as well as income realised from the sale of agricultural produces. Here, in this case also the reference Court has accepted the evidence of witnesses to be reliable one. The Supreme Court in similar circumstances relied upon the evidence of Sarpanch and determined market value of the acquired lands. The evidence of the witnesses examined on behalf of the claimants would indicate that the acquired lands were fertile and the claimants used to take two crops in a year. This claim of the claimants gets corroboration from the revenue record produced at Exhs. 41 to 54 which are extracts from Village Form 7/12. The witnesses examined on behalf of the claimants in the present cases have stated that the claimants used to sow cotton, juver, groundnut etc. and were able to raise 30 maunds of juver per bigha as well as 25 to 30 maunds of wheat and gram and 30 maunds of cotton per bigha. The witnesses claimed that the price of cotton per maund at the relevant time was Rs. 60/- and for groundnut and gram, the same was between Rs. 70/- to Rs. 80/-; whereas for wheat and juver, the price at the relevant time was Rs. 30/- per maund. We may state that though the witnesses examined on behalf of the claimants were subjected to cross-examination, the case advanced by them in respect of yield or income there-from could not

be challenged successfully by the appellants. On scrutinizing the evidence of the witnesses, we find that the conclusion drawn by the reference Court that the average annual yield per bigha would be Rs. 1400/cannot be said to be erroneous or unreasonable in view of the order passed by the Supreme Court which is quoted hereinabove. However, as per the direction of the Supreme Court, 50% ought to have been deducted towards cultivation expenses and multiplier of ten ought to have been applied to the facts of the case for the purpose of determining market value of the acquired lands on yield basis. Calculated on the basis indicated by the Supreme Court, market value of the acquired lands would be Rs. 7000/per bigha i.e. Rs. 437/- per Are. However, as noted earlier, the reference court has determined market value of the acquired lands at Rs. 400/- per Are. The claimants have neither filed appeals claiming more compensation than Rs. 400/- per Are nor filed cross-objections in the appeals instituted by the State and another. Therefore, they are not entitled to more compensation than determined by the reference court, but the appeals filed by the State Government and another cannot be allowed when it is found that determination of compensation of acquired lands at the rate of Rs. 400/per Are is neither excessive nor unreasonable. On the contrary, we notice that the determination of market value by the reference court will have to be upheld in view of the order passed by the Supreme Court which is quoted earlier. Therefore, the State appeals cannot be accepted at all and are liable to be dismissed.

8. In the operative part of the impugned judgment and award,reference court has ordered that the acquiring authority shall pay additional compensation to the claimants as shown in Annexure-A attached to the judgment with running interest at the rate of 9% per annum for the first year from the date of award and for subsequent period till the date of payment, with running interest at the rate of 15% per annum with proportionate costs. A bare look at Annexure-A which forms part of the impugned award makes it evident that the additional compensation determined by the reference court as payable, also includes solatium on the additional amount of compensation payable under section 23(1-A) of the Act. There is also no doubt that a direction to pay additional amount of compensation as envisaged by Section 23(1-A) of the Act is given. Such directions could not have been given in view of the judgment of the Supreme Court rendered in the case of State of Maharashtra v. Maharau Srawan Hatkar, Judgment Today 1995(2) SC 583. The pertinent observations made by the Supreme Court in

Para-7 of the reported decision are as under :-

"It would thus be seen that the additional amounts envisaged under sub-ss.(1-A) and (2) of S.23 are not part of the component of the compensation awarded under sub-s.(1) of S.23 of the Act. They are only in addition to the market value of the land. The payment of interest also is only consequential to the enhancement of the compensation. In a case where the Court has not enhanced the compensation on reference, the Court is devoid of power to award any interest under S.28 or the spreading of payment of interest for one year from the date of taking possession at 9% and 15% thereafter till date of payment into the Court as envisaged under the proviso."

Therefore, the operative part of the order in so far as it directs the appellants to pay the amounts envisaged under section 23(1-A) and solatium under section 23(2) of the Act on the additional amount of compensation payable under section 23(1-A) of the Act is concerned, will have to be set aside and are hereby set

For the foregoing reasons, all the appeals are partly allowed. It is held that the claimants are entitled to compensation at the rate of Rs. 400/- per Are. It is further held that the claimants shall not be entitled to additional compensation as envisaged under section 23(1-A) of the Act nor to the solatium on the additional amount of compensation payable under section 23(1-A) of the Act. Rest of the award is not disturbed at all. There shall be no order as to costs. Office is directed to draw decree in terms of this judgment.
(patel)